

9-17-09

I first saw all this  
9/17/09.

C. 02/09/12  
I cannot  
discern a wit  
of this. How  
much do you think he  
thinks I owe him now?

The same to Collette  
then to Bob Gurnee.  
You wouldn't  
Send to me.

Company Name: RIVERMONT BANKING CO.

Phone: 434-384-1635

FAX: 434-455-4900

Address: 1688 Holcomb Rock Road, Lynchburg, VA

FOSTER V. WYNNE  
CASE NO. 12-60619

DEBTOR'S  
EXHIBIT  
A

To: Bob Gurnee III From: J. L. WYNNE  
Fax: 843-839 2244 Pages: 19 pages  
Phone: 843-839 2239 Date: 9/17/09  
Re: Vicki Marsh & Chapel View CC:

☐ Urgent

☒ For Review

☐ Please Comment

☐ Please Reply

Bob - I still have not received copies of the  
expected letter of intent by Burson & Marsh.

Attached you will find my letter to Vicki  
Linde's computations with my revisions supporting  
my payoff figure of \$114,989 for Aug 1, 2009  
with monthly accrual of 70.00 for interest.

As of OCT 1, 2009 Vicki owes me \$116,391.00  
if received I will release the deeds of trust  
and sign deed to Parker's Island property.

I am not going to send anymore documentation  
The note and deed of trust and Linde's correspondence  
are sufficient.

Also Attached 3 notes / 2 D/T, letter to Burson  
Hr dtd 8/25/06 from Vicki.

July 28, 2009

Vicki:

I SPOKE TO Linde recently concerning you and the sale of 392 Myrtle Ave. she said that she has not spoken to you for some time -- but still paying the interest on the Wachovia loan.

Payoff  
Calculations

As of August 1 2009 you owe me \$114,989 and that figure is increasing by \$701.00 each month because of interest. That is over \$8400 a year.

You must list the property ASAP. Because no realtor is going to promote/advertise the property without a listing, it is not in their best interest to promote the property if someone else could sell it out from under them.

I told Linde that I can no longer wait..... I am going to have to foreclose on the NOTES secured by the deeds of Trust. Since you are allowing the cottage in Abingdon to fall into ruin - I must move promptly to sell it before it crumbles into the ground. You have until September 1, 2009 to TAKE me out of this -- I need it. I don't want

Vicki

Page 2

To but the longer we wait to act the more interest is paid to WACHOVIA and more interest is due me. Soon nothing will be left - your equity will be gone!

You may want to consider auctioning 392 Myrtle. With what you owe on the WACHOVIA NOTE > \$500,000 plus the \$115,000 you owe me plus the \$60,000 \$42,000+ you owe Linde you can get \$750,000+/- at auction you will be out from under the debt 392 Myrtle put you under → AND IF IT BROUGHT LETS SAY \$1 Million → you would have maybe \$250,000 to keep. Letting this continue is foolish and letting Brewer's Alley Fall INTO ~~the~~ Ruin > There is NO Excuse!

I suggest you get with Linde ASAP AND TAKE ACTION

John

P.S. I am more than  
happy to release my liens  
and give up my ownership  
if paid out per the above

John

DEBTOR'S  
EXHIBIT  
B

## KAREN FOSTER - Disbursements / Receipts

Page #	DATE	TO Whom	ckts	Reason	Amount	@ 10% per year	interst pay
1	11/14/06	SHERWIN Williams	store Receipt	Paint	35.14	.01	2.28
2	11/13/06	SHERWIN Williams	store receipt	Paint	179.79	.04	11.27
3	8/06/06	LOWES	store receipt	Painting Supplies	179.05	.04	16.08
4	12/03/06	CASH	signed receipt	<del>cash</del>	200.00	.05	11.45
5	3/27/07	SEARS	store cc receipt	Appliances	1,119.60	.31	29.45
5	3/31/07	SEARS	store cc receipt	Appliances	124.81	.37	21.53
6	2/7/07	CASH	signed receipt	CASH	200.00	.05	7.15
7	11/04/06	APIUS supply	cc receipt	Fluor HEAT coil	564.23	.15	35.23
8	2/28/07	Taylor Bros	cc receipt	Lumber	517.39	.14	17.29
9	12/5/06	City of Lburg	city Bill cc receipt	Sewer/H2O	64.54	.02	3.66
10	11/18/06	LOWES		Refrigerator Appliance	787.56	.22	28.90
11	9/29/06	Sam's club	store receipt	Grill	670.41	.18	41.31
12	12/27/06	Taylor Bros	cc receipt	Lumber	1024.59	.28	52.21
13	8/28/06	Renaissance Academy	cc receipt	cash.	218.88	.06	18.39
14	5/21/06	Home Depot	cc receipt	Flowering	225.24	.06	24.99
15	6/14/06	LOWES	cc receipt	Supplies	127.12	.03	13.26
16	4/18/06	Drumbeaters	receipt	Uncle's Dmin	45.00	.01	3.51
17	12/30/05	Taylor Bros	cc receipt	Supplies	376.44	.10	18.81
18	10/14/06	LOWES	cc receipt	Supplies	107.67	.03	7.61
19	12/20/06	Tenneco White	Receipt	Roofing	360.00	.10	18.93
20	12/18/06	Bonserv LLC	receipt	Removal 2232	2550.00	.70	135.53
21	10/30/06	LAKESIDE Marina	Cashier's CK # 2701	REMOVE BOAT	7000.00	1.92	466.03
22	1/31/07	Taylor Bros	Receipt	Supplies	489.05	.13	20.81
23	11/30/06	Taylor Bros	Receipt	Supplies	1011.67	.28	31.03
24	9/24/06	Taylor Bros	Receipt	Supplies	710.36	.19	53.49
SUBTOTALS Page 1					20,424.52	5.47	1100.21

# of days  
6/10/07

KAREN FOSTER - Disbursements / Receipts

489 464  
16.50.07

Page	DATE	TO Whom	CHK#	REASON	Amount	Percent	Interdredg
25	1-12-07	Karen Foster	8901	CASH	1500.00	41	159 69.44 <sup>20</sup>
25	1-15-07	Bd of A	8903	MTRG pmt	79779	.22	166 36.27
25	1-21-07	Karen Foster	8907	CASH	1000.00	.27	161 40.10
26	3-2-07	Karen Foster	8827	CASH	5000.00	1.37	110 150.68
26	2-27-07	Bd of A	8822	Bd of A 444e	1564.50	42	125 52.13
27	10-30-06	Bd of A	8770	Bd of A mortgage	1825.13	.50	244 122.00
28	12-5-06	ATTI	8841	TELEPHONE	156.41	.04	207 8.86
29	12-05-06	City of Burbury	8843	4204 Secor	64.84	.02	207 3.64
30	8/11/06	Karen Foster	8655	CASH	100.00	.03	223 6.69
30A	8/23/06	Karen Foster	8685	CASH	100.00	.03	211 6.33
32	9/10/06	Karen Foster	8796	CASH	500.00	.14	284 38.88
32	9/10/06	Karen Foster	8798	137 ATTEND	1000.00	.27	283 64.26
34	9/22/06	Karen Foster	8690	CASH	100.00	.03	232 8.46
34	9/22/06	REMOVE Kharz	8691	LABOR 2232 Kharz	268.00	.07	232 20.70
35	9/22/06	Karen Foster	8708	CASH	2000.00	.54	271 151.78
35	9/22/06	REMOVE Kharz	8711	LABOR 2232 add	239.00	.07	225 17.99
35	8/29/06	Karen Foster	8773	CASH	100.00	.03	206 9.18
35	9/1/06	Peter Sackett	8785	Record's Dr	601.83	.16	296 48.78
35	9/18/06	Bd of A	8788	MTRG PMTS	2262.00	.62	295 182.81
36	12/12/06	REMOVE Kharz	8862	LABOR 22-32 1204900	636.00	.17	200 38.81
36	12-14-06	Karen Foster	8861	CASH	1500.00	.41	198 33.43
37	12-26-06	REMOVE Kharz	8880	CASH	3600.00	.10	187 18.34
38	12-1-06	Karen Foster	8839	CASH	1000.00	.27	214 56.97
39	11-23-06	Karen Foster	8804	CASH	1000.00	.27	219 59.13
40	12-05-06	Karen Foster	8844	CASH	500.00	.14	201 28.98
Page	SUBTOTAL				21675.00		1151.69

~~CONFIDENTIAL~~

KAREN FOSTER - Disbursements/Receipts

# 044 UNIT 11-07  
6-30-07

PLUG#	DATE	TO Whom	CASH	REASON	Amount	Percent	Interdredg
41	8/23/06	City of Libby	8686	Karen Foster parking fee	2000	—	311.85
41	8/25/06	Karen Foster	8689	Cash	100.00	.03	9.27
42	11/06/06	Karen Foster	8735	Cash	1000.00	.27	257.63
42	11/23/06	Karen Foster	8804	Cash	1000.00	.27	257.63
43	12/5/06	Bob A	8842	MTG PMF	767.11	.21	164.37
44	12-5-06	City of Libby	8843	MTG PMF	694.54	.02	16.36
45	1-15-06	Bob A	8903	MTG PMF	797.79	.22	176.27
46	2-27-07	Bob A	8822	MTG PMF	1564.95	.43	675.16
47	8/01/05	Karen Foster	8154	Cash	15000.00	4.11	2812.60
48	10-3-06	Terrance Wilson	8747	Labor	32000	.09	227.8
49	10-13-06	Julie R. Dugan	8746	MTG PMF	500.00	.14	35.62
50	9/24/06	Lenore Wilson	8711	Labor	239.00	.07	17.85
51	9/22/06	Timothy Wilson	8961	Labor	268.00	.07	20.55
52	2/01/06	Peaksviewhwy	8361	YET B. 115	182.60	.05	14.90
53	2/27/07	Karen Foster	9034	Cash	7000.00	1.92	122.74
					2782394	7.63	3289.88

RECAP of Karen Foster Disbursements  
Pages A, B, C compiled 7-11-07 by JLW

	Principal Amount	INT. Per diem	Interest Due 6-30-07
Page A	\$ 20,424.52	\$ 5.47	\$ 1100.21
Page B	37675.60	6.60	1151.69
Page C	27823.94	7.63	3289.88
TOTALS	<u>85,924.06</u>	<u>\$ 19.70</u>	<u>5541.78</u>

Interest per month accrues @  $\frac{\$19.70}{\text{day}}$   
 30 Day  $\rightarrow \$591.00$   
 31 Day  $\rightarrow \$610.00$

on July 31 P+I = 6151.78 INT  
85924.06 pr  
92075.84

**CUNNINGHAM & DREWRY**

**ATTORNEYS AT LAW**

**105 ARCHWAY COURT**

**LYNCHBURG, VIRGINIA 24502**

**RICHARD P. CUNNINGHAM  
B. LEIGH DREWRY, JR.**



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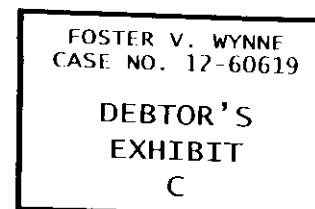
*Serving the Central Virginia Community since 1975*

November 23, 2011

The Honorable William N. Alexander, II  
Franklin County Circuit Court  
Post Office Box 601  
Rocky Mount, Virginia 24151

**Re: John L. Wynne v. Karen Foster  
File Number: CL10004795-00**

**Re: Karen Foster v. John L. Wynne, et al  
File Number: CL10005362-00**



Dear Judge Alexander:

Thank you for taking the time to hear counsel on the various motions in the above captioned cases on November 16, 2011 in your court. I understand the Court has taken our Motions for Summary Judgment in the action filed by Ms Foster and the Motion for Partial Summary Judgment in the Unlawful Detainer appeal under advisement to allow the show cause hearing involving Mr. Sackett to transpire and to allow Mr. Armstrong a chance to develop the nebulous theory he advanced on November 16, 2011. At the same time, however, I believe it wise to provide you with additional information for your consideration as the case proceeds.

Enclosed are copies of the two outlines used to argue the Motion for Summary Judgment and Motion for Partial Summary Judgment. I have also enclosed a copy of the Request for Admissions which were submitted to Ms Foster on May 19, 2011, and answered by her counsel, Robert B. Armstrong, on June 10, 2011 in case number CL10004795-00. Ms Foster's answers to the Request for Admissions provide additional support to the arguments advanced on November 16, 2011, that Ms Foster never challenged the notice which preceded the foreclosure sale nor the actual mechanics of the foreclosure sale. You will also find enclosed page 39 of her May 26, 2011 deposition, in which she concedes multiple people in addition to Mr. Wynne and Mr. Sackett were present at the foreclosure sale held on the premises.

It is Mr. Wynne's position, as advanced on November 16, 2011, that Ms Foster's sole challenge to the entire process deals with what happened following the foreclosure process. She



The Honorable William N. Alexander, II  
November 17, 2011  
Page 2 of 2

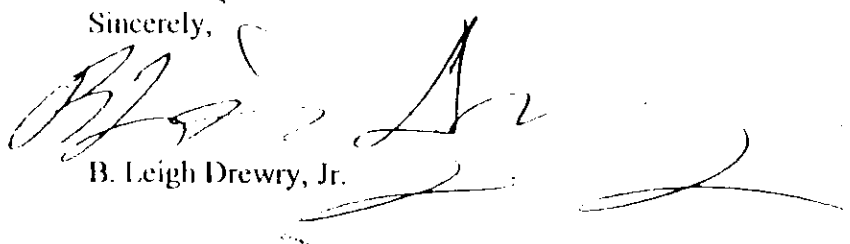
makes a vague claim of collusion between Mr. Wynne and Mr. Sackett and hopes to prove this claim in court.

The bottom line, however, is the facts and law are clear any lien obtained by Bank of America runs with the land, and does not adversely impact Mr. Wynne's position. Instead, Mr. Wynne accepts his deed to the premises subject to Bank of America's deed of trust. If anyone has something to complain about, it is Mr. Wynne and not Ms Foster.

This is even more so in light of the state of the law on September 25, 2008 and October 16, 2008, the dates of the foreclosure sale and the Trustee's Deed. **VA CODE ANN** §55-59.4 required the trustee, Mr. Sackett, to receive and receipt the proceeds from the sale without the purchaser, Mr. Wynne, "being required to see to the application" of the same. This is so because as the Virginia Supreme Court said in *Brown v. City of Roanoke*, 172 Va. 227, 1 S.E. 2d 279 (1939) the purchaser is entitled to rely upon the title conveyed by the Trustee's Deed.

Having affirmatively admitted she has no complaints concerning the notice and the mechanics of the foreclosure sale, Ms Foster fails to establish an issue of fact for determination by a jury. She also can not impose a duty upon Mr. Wynne where the law affirmatively says none exists. Therefore, it is a matter of law for the Court to determine and enter judgment in favor of John L. Wynne. Mr. Cunningham and I respectfully request such an Order be entered.

Sincerely,



B. Leigh Drewry, Jr.

BLD/det  
Enclosures

cc: Robert B. Armstrong, Esquire  
Peter C. Sackett

## **MOTION FOR PARTIAL SUMMARY JUDGMENT ON UNLAWFUL DETAINER**

I Summary judgment applies where there are no facts in dispute

A) Inferences favorable to non-moving party are to apply

B) Best way to determine if facts in dispute is to look to elements of cause of action pled

II Elements of Unlawful Detainer

A) Plaintiff has possession/right of possession

1) D signed D/T

a) D stipulates to her signature on D/T

2) D admits at trial she owed money under D/T

a) present at foreclosure

3) D admits in deposition she owes P money under D/T

a) various places cited in motion

4) D defaulted on payment under D/T note

a) see above citations to deposition

5) Foreclosure sale held with D present and aware

a) see trial transcript, page 10, lines 5-21

6) Trustee's Deed, Exhibit B

a) no action ever filed to void it based on improper notary's signature

B) Holdover w/o legal right

1) Trial testimony

a) Transcript p. 3, lines 14-15 and page 6

b) D aware of foreclosure Trial Transcript page 10, lines 5-21

C) Notice to Quit

1) All of above shows she not wanted

2) Notice of foreclosure sale

a) TT p. 6, lines 5-13

b) TT p. 10, lines 10-21

III Granting Defendant all reasonable inferences, the most the evidence shows is:

A) Peter Sackett was negligent in paying off the BofA D/T

1) Facts would show D interfered with securing a proper payoff amount

2) Does not affect title, only affects status of lien on property which P accepts when he accepts trustee's deed

a) P may have c/a against Peter but it of no moment to D

B) Peter Sackett may have breached a duty to D regarding the payment of

excess funds

1) No duty to debtor

a) See below in Conclusion

2) May be resolved in subsequent action against Peter for damages

C) No cloud on D's title

1) She has never alleged any impropriety with the notice or conduct of the foreclosure sale

a) all of her allegations go to the accounting and whether she is owed any excess

b) all of her allegations go to the BofA D/T remaining on the record for as long as it did, that is to P's detriment, not hers

#### IV Counter to Foster's Response

A) Claim of facts and law still at issue

1) First issue is what did Peter do with the money from the foreclosure sale

a) not at issue in unlawful detainer

b) no duty by Peter as T'ee to D

2) Second issue - Cloud on Title

a) not at issue in unlawful detainer

b) deals with BofA D/T which has been satisfied

c) again deals primarily with disposition of any excess funds

d) no duty owed by T'ee to debtor (see below)

3) Third issue - Wynne has not responded to Sackett's failure to answer interrogatories

a) this is evidence they acting in concert

i) this is a figment of someone's overly active imagination

#### V Conclusion

A) P loaned D money - \$40,000 by D's account

B) Loan secured by D/T

C) D fails to pay

D) Lien of D/T perfected with foreclosure sale

1) D does not challenge notice

a) D had actual notice in light of filing for injunction

2) D does not challenge conduct of sale

3) D's only challenge is to accounting

a) T'ee (Peter) has no duty to debtor (D/Foster)

i) *Horvath v. Bank of New York*, 2010 U.S. Dist. LEXIS 19965, 4-5 (2010)

ii) *Fleet Finance v. Burke & Herbert Bank and Trust*, 27 Va. Cir. 98 (1992)

E) Title transferred to P

- F) D remains in possession of house without paying rent, etc.
- G) Facts not in dispute

## **MOTION FOR SUMMARY JUDGMENT IN FOSTER'S LAWSUIT**

I Summary judgment applies where there are no facts in dispute

A) Inferences favorable to non-moving party are to apply

B) Best way to determine if facts in dispute is to look to elements of cause of action pled

II Cause of action relied upon by Plaintiff Foster is shifting and unclear, but appears to be one of Quiet Title

A) Elements of a Quiet Title action are:

1) Plaintiff has valid, legal and equitable title to the premises

a) Foster lacks for all of the reasons set out in the unlawful detainer outline

2) Plaintiff has actual possession of the premises

a) Foster's continued possession is unlawful

b) Foster fails to vacate despite failure to pay

c) BoA D/T is irrelevant at this point since its lien has been satisfied

i) If Trustee's Deed is set aside, then Foster is indebted to Wynne for payment of the BoA loan, at least on a theory of unjust enrichment

3) Defendant (Wynne) lays claim to the premises

a) He does, but his claim is superior given all arguments in unlawful detainer outline

4) Plaintiff has stated the nature of the claim

a) Plaintiff's claim goes primarily to the accounting and what the T'ee did with the money from the foreclosure sale

i) all irrelevant to the issue of title

ii) T'ee has no duty to Plaintiff

- see unlawful detainer outline

- if there is a duty, then it is remedied with money damages against T'ee, not with setting aside a valid T'ee's Deed to Defendant Wynne who is a blp

III Counter to Foster's Response

A) See unlawful detainer outline

#### IV Conclusion

A) See unlawful detainer outline